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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

JENNIFER H.,

Petitioner,

v.

THE SUPERIOR COURT OF FRESNO
COUNTY,

Respondent;

FRESNO COUNTY DEPARTMENT OF
SOCIAL SERVICES,

Real Party in Interest.

GREGORY K.,

Petitioner,

v.

THE SUPERIOR COURT OF FRESNO
COUNTY,

Respondent;

FRESNO COUNTY DEPARTMENT OF
SOCIAL SERVICES,

Real Party in Interest.

F073025

(Super. Ct. No. 10CEJ300187-2)

F073026

(Super. Ct. No. 10CEJ300187-2)

OPINION

THE COURT*

ORIGINAL PROCEEDING; petition for extraordinary writ review. Mary Dolas,
Judge.

Jennifer H., in pro. per., for Petitioner Jennifer H.

* Before Gomes, Acting P.J., Detjen, J. and Peña, J.

Gregory K., in pro. per., for Petitioner Gregory K.

No appearance for Respondent.

Daniel C. Cederborg, County Counsel, and Brent C. Woodward, Deputy County Counsel, for Real Party in Interest.

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The juvenile court denied petitioners Gregory K. (father) and Jennifer H. (mother) reunification services under Welfare and Institutions Code section 361.5, subdivision (b)(13)¹ (resistance to court-ordered drug treatment) and set a section 366.26 hearing as to their six-year-old daughter, Madeline. Petitioners, in propria persona, seek extraordinary writ review of the juvenile court's denial of services order, claiming it was error because there are other cases in which the court ordered services.² (Cal. Rules of Court, rules 8.450-8.452.) They also inform this court that mother is a direct descendant of the Creek Indian Tribe and that they requested her birth certificate from Oklahoma. They ask this court to issue a writ directing the juvenile court to vacate the setting hearing, return Madeline to their custody, and terminate dependency jurisdiction. They also request a stay of the section 366.26 hearing, pending the granting or denial of this writ petition. We deny the writ petition and the request for a stay.

PROCEDURAL AND FACTUAL SUMMARY

In August 2015, a police officer arrested mother and father after finding them under the influence of methamphetamine and living in deplorable conditions with then five-year-old Madeline. The Fresno County Department of Social Services (department)

¹ All statutory references are to the Welfare and Institutions Code.

² Petitioners each filed a writ petition, virtually identical in content, which we assigned case Nos. F073025 and F073026. On our own motion we consolidated the petitions.

took Madeline into protective custody and placed her in foster care. The department filed a dependency petition on Madeline's behalf alleging that mother and father's methamphetamine use placed her at a substantial risk of harm. (§ 300, subd. (b).) The department further alleged that mother and father continued to use methamphetamine despite having received court-ordered drug treatment in a prior dependency case involving Madeline.

The juvenile court ordered Madeline detained pursuant to the petition and, in October 2015, sustained the allegations and adjudged Madeline a dependent child. By that time, mother and father had pursued drug treatment on their own. Mother was participating in a residential treatment program and father was in a sober living program waiting for a vacancy in a residential program. The matter was set for disposition.

Meanwhile, the department inquired whether petitioners claimed any Indian ancestry and they initially stated they did not. However, mother subsequently reported that her father, paternal grandparents, and two paternal aunts belonged to the Muscogee (Creek) Nation in Oklahoma. Father claimed possible Indian heritage through the Apache Tribe. As a result, the department sent notices to various tribes, including the Muscogee (Creek) Nation. In October 2015, the Muscogee (Creek) Nation responded, stating that it could not trace Madeline in their tribal records based on the information provided and did not consider her an "Indian Child" as defined in the Indian Child Welfare Act (25 U.S.C. §§ 1901 et seq. (ICWA)). It also stated, however, that any incorrect or omitted family documentation could invalidate the determination.

In December 2015, the department filed a motion asking the juvenile court to find that the ICWA did not apply. The department's motion incorporated the Muscogee (Creek) Nation's response.

In January 2016, the department filed its report for the dispositional hearing and recommended the juvenile court deny petitioners reunification services under section 361.5, subdivision (b)(13) because of their extensive history of drug use and

resistance to court-ordered treatment.³ In January 2011, mother and father were court ordered to participate in drug treatment as part of a dependency case initiated in August 2010 involving Madeline. They completed their drug treatment programs in 2011, and, in 2012, the juvenile court returned Madeline to their custody and dismissed its dependency jurisdiction. They subsequently relapsed; mother in 2013 and father in 2012 to 2013.

The juvenile court conducted a contested dispositional hearing in January 2016. Mother and father testified that Madeline was strongly bonded to them and that they were doing well in their current treatment programs and were better prepared this time to maintain their sobriety. Mother also testified that she participated in Native American Services, which provided support for her sobriety. They asked the court to order services to reunify them with Madeline in light of their strong bond with her.

Mother and father further testified that they participated in drug treatment even before Madeline's prior dependency case. Father testified he participated in drug treatment as a condition of parole sometime between 2000 and 2003, and again between 2006 to 2008. Mother testified she entered residential drug treatment in 2000 and in 2003. Father testified he relapsed in 2012 to 2013 and quickly resumed daily use of methamphetamine. He admitted being addicted to methamphetamine. Mother testified she began using methamphetamine in 1987, at the age of 14. She also testified that when she relapsed, sometime in 2013 or 2014, that she resumed daily use of methamphetamine. Father testified he had been using methamphetamine for over a year when Madeline was removed.

³ Section 361.5, subdivision (b)(13), authorizes the denial of reunification services when the juvenile court finds, by clear and convincing evidence, as relevant here, "[t]hat the parent ... of the child has a history of extensive, abusive, and chronic use of drugs or alcohol and has resisted prior court-ordered treatment for this problem during a three-year period immediately prior to the filing of the petition that brought that child to the court's attention."

At the conclusion of the hearing, the juvenile court ruled on the ICWA motion and found that it did not apply. The court also denied mother and father reunification services under section 361.5, subdivision (b)(13). In ruling, the court noted that mother and father did not simply relapse but returned to significant daily use, which forced Madeline to live in deplorable conditions. The court also stated that it presided over the 2010 case and recalled that mother and father made similar commitments to engage in recovery efforts and maintain sobriety. However, once they were no longer under the scrutiny of the court or law enforcement, they reverted back to drug use to the detriment of their children. The court concluded their prognosis for continued sobriety was not supported by their history and that it was not in Madeline's best interest to provide them reunification services. The court set a section 366.26 hearing to occur in April 2016.

Mother and father each filed a timely writ petition and appeared for oral argument.

DISCUSSION

A. Adequacy of the Petition

As a general proposition, a juvenile court's rulings are presumed correct. (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564.) Thus, absent a showing of error, this court will not disturb them. Such is the case where the juvenile court denies a parent reunification services and sets a section 366.26 hearing to implement a permanent plan. A parent seeking review of the juvenile court's orders from the setting hearing must, as petitioners did here, file an extraordinary writ petition in this court to initiate writ proceedings. The purpose of writ proceedings is to allow this court to review the juvenile court's orders to identify any errors before the section 366.26 hearing occurs. California Rules of Court, rule 8.452 requires the petitioner to identify the error(s) he or she believes the juvenile court made. It also requires the petitioner to support each error with argument, citation to legal authority, and citation to the appellate record. (Cal. Rules of Court, rule 8.452(b).)

Petitioners identify the juvenile court's error by asserting, "We as parents are being denied services where there are other cases that have obtained services." They do not, however, develop this statement into an argument supported by citation to legal authority or the record.

Real party in interest urges this court to deny the petition as facially inadequate because it does not comport with the rule. We do have that discretion. Nevertheless, we will, if possible, liberally construe a petition in favor of finding it adequate for review. (Cal. Rules of Court, rule 8.452(a)(1).) We do so in this case and construe the petition as challenging the sufficiency of the evidence to support the juvenile court's denial of reunification services under section 361.5, subdivision (b)(13).

B. Denial of reunification services

When the juvenile court orders a child removed from parental custody, it is required by statute to order services to reunify the family unless any one of the exceptions identified in section 361.5, subdivision (b) applies. (§ 361.5, subs. (a) & (b).) In this case, the juvenile court found that subdivision (b)(13) of section 361.5⁴ applied to petitioners. Subdivision (b)(13) pertains to a parent who has "a history of extensive, abusive, and chronic use of drugs" and "has resisted prior court-ordered treatment for this problem during a three-year period immediately prior to the filing of the petition that brought that child to the court's attention."

The department presented evidence that petitioners have a longstanding methamphetamine addiction and they admitted as much by their testimony. The department also presented evidence that petitioners completed court-ordered treatment as part of Madeline's prior dependency case and that they relapsed within the three years

⁴ All further references to this statutory provision will be denoted "subdivision (b)(13)."

preceding the filing of the most recent dependency petition in 2015.⁵ Thus, they fell squarely within the statute.

Petitioners do not argue that subdivision (b)(13) does not apply to them. Rather, they argue that other parents (apparently similarly situated) were provided reunification services.

We cannot comment on the outcome in other juvenile dependency cases since we review only the case before us. Further, our concern is whether the juvenile court made the right decision under the law. As we explained above, the evidence supported the juvenile court's decision that subdivision (b)(13) applied to petitioners. Once the court makes that determination, section 361.5, subdivision (c) prohibits the juvenile court from ordering reunification services for a parent unless the court finds that reunification is in the best interest of the child.

Here, the juvenile court did not find it would be in Madeline's best interest to order reunification services for petitioners because of their longstanding drug abuse, their history of relapse, and the extreme neglect that Madeline suffered as a result. In another case where subdivision (b)(13) applies, the juvenile court could order reunification services, having determined that doing so would serve the child's best interest. However, in this case, the juvenile court decided not to and we conclude it did not err.

C. Request for a Stay

Petitioners request a temporary stay of the section 366.26 hearing to allow them time to obtain mother's birth certificate. Presumably they do so for the purpose of providing the Muscogee (Creek) Nation additional information with which to determine whether Madeline is an Indian child under the ICWA. Petitioners do not, however, claim that the juvenile court erred in finding that the ICWA does not apply. We therefore do

⁵ Resumption of regular drug use following a period of sobriety is considered resistance to treatment under subdivision (b)(13). (*Laura B. v. Superior Court* (1998) 68 Cal.App.4th 776, 780.)

not address that issue. Rather, we address why we decline to issue a stay.

California Rules of Court, rule 8.452(f) gives this court—“the reviewing court”—discretion to stay the section 366.26 hearing pending determination of the writ, but states that this court “must require an exceptional showing of good cause” to justify the stay. Petitioners have failed to show what information they expect to glean from mother’s birth certificate and why that information compels a stay of the section 366.26 hearing. They have, in effect, failed to provide an exceptional showing of good cause. Further, should petitioners receive information that would invalidate the Muscogee (Creek) Nation’s prior determination, they can submit that information to the department.

DISPOSITION

The petition for extraordinary writ is denied. The request for a temporary stay of the section 366.26 hearing is also denied. This opinion is final forthwith as to this court.